

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FONTRISE CHARLES,

Petitioner,

Hon. Janet T. Neff

v.

Case No. 1:13-mc-00049

UNITED STATES OF AMERICA,

Respondent.

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**REPORT AND RECOMMENDATION**

This matter is before the Court on Petitioner's Motion to Quash IRS Summons (Dkt. 1), which was referred to the undersigned by the Honorable Janet T. Neff for report and recommendation under 28 U.S.C. § 636(b)(1)(B). This is a proceeding brought under 26 U.S.C. § 7609(b)(2) to quash an IRS records summons served on Fifth Third Bank, authored by Special Agent Rodney Urlaub. Petitioner challenges the May 20, 2013 summons, returnable June 14, 2013, which seeks petitioner's financial records. Petitioner, acting through counsel, filed a petition to quash on June 5, 2013 (Dkt. 1), accompanied by a declaration (Dkt. 5) and brief (Dkt. 6) in support of the motion to quash. The motion was set for hearing on July 29, 2013. The United States filed an opposition to the petition on July 25, 2013 (Dkt. 7). Petitioner filed a reply on July 26, 2013 (Dkt. 8).

Prior to the date of the hearing, the undersigned learned that a nearly identical issue involving the same petitioner but a different bank was pending before the Hon. Robert Holmes Bell in Case No. 1:13-mc-00046. Magistrate Judge Joseph G. Scoville, on referral, issued a report and recommendation. On review, Judge Bell remanded the case to Magistrate Judge Scoville to consider

issues of first impression. Those issues of first impression made the petition identical in terms of legal analysis to this one.

The undersigned has reviewed petitioner's and the government's submissions in this matter, as well as Judge Scoville's initial report and recommendation (Dkt. 9 in Case No. 1:13-mc-00046), Judge Bell's order remanding the case to Judge Scoville for consideration of issues of first impression (Dkt. 11 in Case No. 1:13-mc-00046), Judge Scoville's second report and recommendation that the petition to quash summons be denied (Dkt. 15 in Case No. 1:13-mc-00046), and Judge Bell's order approving and adopting the second report and recommendation (Dkt. 19 in Case No. 1:13-mc-00046). I have also reviewed the recording of the parties' argument at the July 29, 2013 hearing on the petition in this case.

I find Judge Scoville's recitation of the facts in Case No. 1:13-mc-00046 to be identical to the facts in this case, and I find his legal analysis to be correct and cogent. Therefore, I recommend that the petition to quash the May 20, 2013 summons issued to Fifth Third Bank (Dkt. 1) be DENIED.

Respectfully submitted,

Date: November 27, 2013

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).